86-335

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

No.

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST in Boston, Massachusetts, a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased, and RUTH L. TANNER

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

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481

QUESTIONS PRESENTED

Whether the Freedom of Religion Clause of the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, bars the inquiry of a civil trial to determine whether the Christian Science Church, its practitioner and its nurse were guilty of tortious conduct in causing the death of one of their patients by wrongfully denying him medical care that would have saved his life.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

Petitioner, Mary Baumgartner, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the First District Appellate Court for the State of Illinois entered in this proceeding on March 4, 1986.

OPINION BELOW

The opinion of the First District Appellate Court for the State of Illinois, which appears in the Appendix hereto, p. A1, *infra*, is reported at 141 Ill.App.3d 398, 490 N.E.2d 1319, 96 Ill.Dec. 114 (1st Dist. 1986).

JURISDICTION

The judgment of the First District Appellate Court for the State of Illinois was entered on March 4, 1986. A timely petition for leave to appeal to the Illinois Supreme Court was denied on June 3, 1986 and this petition for certiorari was filed within 90 days of that date. The Illinois Supreme Court's order is included in the Appendix hereto at A16. This Court's jurisdiction is invoked under 28 U.S.C., Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

First Amendment, United States Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

RAISING THE FEDERAL QUESTION

Petitioner filed a lawsuit in the Circuit Court of Cook County, Illinois against respondents to recover money damages from them for the alleged wrongful death of John Baumgartner. Petitioner's Fourth Amended Complaint appears in the Appendix hereto p. A17, *infra*. Named as defendants are the First Church of Christ, Scientist, in Boston, Massachusetts, the Mother Church of the denomination, Paul A. Erickson, a Christian Science practitioner and Ruth L. Tanner, a Christian Science nurse. Damages are claimed under negligence and intentional tort theories.

The lawsuit also seeks to impose a constructive trust over property Baumgartner had bequeathed to the Church in his will on the theory that the Church's tortious conduct in causing his death should bar it from receiving benefits from his demise.

The thrust of petitioner's tort claims is that respondents wrongfully prevented John Baumgartner from obtaining medical care by refusing to stop treating him when asked to do so, by making misrepresentations about the status of his health and by using threats, intimidation and coercion to reverse Baumgartner's decision to seek medical treatment in place of Christian Science faith healing. Petitioner contends that this conduct of respondents was in violation of their common law duties of care and that it also constituted Christian Science malpractice in that the practitioner and nurse violated regulations established by the Church governing healing practices.

In the trial court, respondents raised the shield of the First Amendment. They claimed that the issues raised by petitioner's complaint are not justiciable because an inquiry would have to be made into whether the tenets of the Christian Science Church are valid. Repondents contended that such an inquiry is barred by the First Amendment.

The trial court agreed and granted respondents' motions to dismiss. The First District Appellate Court for the State of Illinois affirmed the dismissal. It specifically held that the causes of action alleged in petitioner's complaint would require an intrusive inquiry into the beliefs of Christian Science and their validity and such an inquiry is precluded by the First Amendment. *Baumgartner v. First Church of Christ, Scientist*, 141 Ill.App.3d 398, 490 N.E.2d 1319, 1325, 1326 (1st Dist. 1986).

STATEMENT OF THE CASE

As alleged in Petitioner's Fourth Amended Complaint, John Baumgartner died on October 23, 1974, at his home near Plano, Illinois, of uremic poisoning which was the result of untreated prostatitis. He had been acutely ill for 10 days. Simple surgery and medication can cure prostatitis.

At the time of his death, John Baumgartner was a successful inventor and industrialist. He was survived by his wife, Mary, and his two minor children, David and Debra. During his last illness, Baumgartner retained the services of Paul Erickson, a Christian Science practitioner, to provide him with spiritual healing. Erickson brought in Ruth Tanner, a Christian Science nurse, to assist him in his treatment.

Christian Science is a religious denomination founded by Mary Baker Eddy in 1879. Its basic premise is that disease can be cured through prayer. Its followers do not believe in medical care for the treatment of physical ailments.

The First Church of Christ, Scientist, in Boston, Massachusetts, is the head of and controls the religious denomination. It trains practitioners and nurses in the art of Christian Science healing. The Church lists practitioners and nurses in the *Christian Science Journal*, a Church publication, when they have attained competency. The

Church expects practitioners and nurses to earn their livings exclusively from healing. It advises practitioners and nurses on both spiritual and legal aspects of their healing activities. It publishes specific guidelines, procedures and directives that govern their administration of Christian Science treatment.

The Christian Science Church is an established health care enterprise. Both health insurance carriers and government health insurance programs such as Medicaid and Medicare recognize Christian Science treatment as a reimbursable health care expenditure.

When John Baumgartner became ill on October 13, 1974, he called Paul Erickson who came to his home immediately. Erickson locked himself into a bathroom with Baumgartner and administered hot baths and massaged Baumgartner's prostate gland. Hot baths and prostate massage are recognized medical treatments for the disease of prostatitis. Erickson also provided Christian Science spiritual treatment. He monitored Baumgartner's condition through daily telephone calls.

Erickson's assistant, Ruth Tanner, was a graduate Christian Science nurse certified by the Department of Care of the First Church of Christ, Scientist. Tanner had previously received a degree in medical nursing from Copley Memorial Hospital, Aurora, Illinois, and had worked as a medical nurse in the Chicago area for many years. She came to Baumgartner's home to assist in his care.

On October 20, 1974, Baumgartner discovered a three inch hole near his rectum through which internal organs protruded. Toxins trapped in his body by his swollen prostate gland had eaten through his body tissues. Tanner dressed the wound using sanitary napkins and instructed Mary Baumgartner in how to clean and apply absorbent dressings.

After the wound developed, John Baumgartner decided to seek medical treatment as an alternative to Christian Science healing. Baumgartner requested his wife, Mary, to obtain a physician and, also, to inform Erickson and Tanner that he no longer wanted their services. Mary Baumgartner telephoned Erickson and advised him that her husband wanted Tanner and him to withdraw from providing

further care. Instead of doing so, Erickson went to the Baumgartner home where he took Mary into a separate room and ordered her to obey him as the doctor in the case. He forbid her to obtain a physician to treat Baumgartner. Erickson told Mrs. Baumgartner that if she even spoke with a medical doctor, her husband would die as a result. Erickson then repeated the same threats to John Baumgartner. As the direct result of Erickson's conduct and statements to the Baumgartners, no medical doctor was called in to treat the decedent's fatally deteriorating case of prostatitis.

Erickson and Tanner continued to administer Christian Science treatment, principally by telephone calls to the Baumgartners. They continued to insist that Christian Science healing was effecting a cure. Meanwhile Baumgartner's condition worsened steadily and he died several days later.

Petitioner, Mary Baumgartner, brought an action for wrongful death against the Church, Erickson and Tanner as Executor of John Baumgartner's estate and on behalf of the minor children, David and Debra. In her Fourth Amended Complaint, she charged respondents with negligence, wilful and wanton misconduct, and Christian Science malpractice. She also sought the creation of a constructive trust composed of all funds received by the Church from Baumgartner's estate. The trial court dismissed these allegations on the basis that respondents are shielded by the First Amendment. This ruling was affirmed by the First District Appellate Court for the State of Illinois. The Illinois Supreme Court declined to consider the case.

REASONS FOR GRANTING THE WRIT

I. The Case Presents Questions of Constitutional Law Not Yet Settled by This Court.

The question of whether the First Amendment protects religious faith healers and their Church from tort liability for causing the death of a patient through their wrongful treatment is a novel and substan-

tial one. As noted by the Illinois Appellate Court, the issue was one of first impression in the state, *Baumgartner v. First Church of Christ, Scientist*, 141 Ill.App.3d 398, 490 N.E.2d 114, 117 (1st Dist. 1986), and it has never been considered by this Court.

The case is part of a growing conflict between the First Amendment's guarantee of religious freedom claimed by faith healers and the interest of the state in protecting the health and welfare of its citizens. The conflict is of substantial importance because the Christian Science Church and other religions holding similar beliefs are major health care providers. The Christian Science Church currently lists in the *The Christian Science Journal*, one of its publications, the names of more than 3,000 practitioners and nurses who are engaged full time in the profession of faith healing. These practitioners and nurses are located in all 50 states and the District of Columbia. 104 *The Christian Sci. J.* (April, 1986) at 50-56.

Moreover, medical insurance companies include the cost of Christian Science treatment in their coverage and certain Christian Science healing services are reimbursable under Medicare and Medicaid. Christian Science Committee on Publication for Illinois, *Legal Rights and Obligations of Christian Scientists in Illinois* at 141-47, 161-65, March, 1978.

The incursion of the Christian Science Church and other denominations that practice faith healing into the health care field is attracting greater government scrutiny and is spawning increasing litigation. State prosecutors in California are bringing manslaughter charges against parents who were followers of Christian Science whose failure to obtain medical care led to the death of their children. *Walker v. Superior Court (People)*, 222 Cal. Rptr. (Cal.App.3d Dist.) *rev. granted*, 224 Cal. Rptr. 340, 715 P.2d 260 (1986); *Rippberger v. Superior Court (People)*, *appeal docketed*, No. 24997 (Cal. March 27, 1986). In Indiana, parents who were members of the Faith Assembly Church were convicted of the reckless homicide of their four month old daughter for relying on spiritual healing to cure the illness which caused the child's death. *Bergmann v. State*, 486 N.E.2d 653 (Ind.App. 4th Dist. 1985). In addition, there is presently pend-

ing before the Michigan Court of Appeals a lawsuit seeking damages against the Christian Science Church and one of its practitioners for the alleged wrongful death of an infant. *Brown v. First Church of Christ, Scientist*, No. 73903 (Mich. App.). An important issue in each case is the First Amendment protection of religion.

The parameters of the First Amendment's protection of faith healing need to be drawn by this Court through its consideration of this case.

II. The Decision Below is in Conflict with Applicable Principles Established by This Court.

There is no dispute that respondents' right to believe that human illness can be treated through prayer is absolute under the First Amendment. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Their right to implement that belief, however, through the administration of Christian Science treatment is not. Their conduct, although motivated by religious belief, can be regulated if there is a superseding compelling government interest. *Bob Jones University v. United States*, 461 U.S. 574 (1983). This Court has recognized previously that the state has a paramount interest and may regulate religious conduct that threatens the health and welfare of its citizens. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

The decision of the Illinois Appellate Court is inconsistent with these principles and is in error. The state has a compelling interest to inhibit practices of the Christian Science Church that cause injury and to provide a remedy to those person who have been injured through the tortious conduct of its practitioners and nurses.

Other religious denominations are dedicated to providing health care through conventional medical treatment by sponsoring and operating hospitals. Yet, those institutions are subject to and must conform with government regulations. *St. Elizabeth Hospital v. N.L.R.B.*, 715 F.2d 1193 (7th Cir. 1983). Why should the Christian Science Church be any different?

The Illinois Appellate Court erroneously relied upon this Court's decisions in *Thomas v. Review Board of Indiana Employment Security Division*, 450 U.S. 707 (1981) and *Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich*, 426 U.S. 696 (1976). Petitioner is not requesting the courts to intervene in an intra-church dispute or to interpret the beliefs of the Christian Science Church. She is seeking to make respondents responsible for their denying John Baumgartner life saving medical care through non-religious conduct.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the First District Appellate Court of the State of Illinois.

Respectfully submitted,

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August 29, 1986

Mary BAUMGARTNER, as Executor of the Estate of John Baumgartner, deceased, on Behalf of David Baumgartner and Debra Baumgartner, minor children of the decedent, Plaintiffs-Appellants,

v.

The FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, a foreign corporation, the Northern Trust Company, as Executor of the Estate of Paul A. Erickson, deceased, and Ruth L. Tanner, Defendants-Appellees.

No. 84-1731.

Appellate Court of Illinois,
First District, First Division.

March 4, 1986.

Executor of patient, who died after receiving religious healing treatments, brought action against church, practitioner of religious healing and nurse of religious healing. The Circuit Court, Cook County, William R. Quinlan, J., granting motion to strike and dismiss complaint. Executor appealed. The Appellate Court, Buckley, P.J., held that: (1) executor failed to state claim for medical malpractice; (2) question of whether practitioner and nurse deviated from standard of care of ordinary member of religion was not a justiciable controversy; (3) executor failed to state claim for negligence; (4) whether practitioner and nurse negligently or intentionally applied church doctrine was not a justiciable controversy; and (5) executor could not have property which patient bequeathed to church subject to constructive trust.

Affirmed.

1. Physicians and Surgeons **15(17, 21)**

Practitioner of religious healing and nurse trained in religious healing were not under legal duty to comply with standards of diagnosis and care imposed upon members of medical profession, and thus, medical malpractice claim could not be maintained against them by executor of patient who subsequently died after treatment.

2. Religious Societies **14**

Question of whether or not practitioner in religious healing and nurse trained in religious healing deviated from standard of care of ordinary member of religion was not a justiciable controversy being barred by first amendment [U.S.C.A. Const. Amend. 1].

3. Negligence **2**

In deciding whether a duty of reasonable care exists, trial court is to consider reasonable foreseeability of injury, public policy and social requirements, magnitude of burden of guarding against injury and consequences of placing that burden upon defendant.

4. Constitutional Law **84.5(17)**

Executor of patient, who submitted to religious healing, failed to state a claim against church, practitioner in religious healing, that nurse trained in religious healing; to determine whether those parties breached any duty owed to patient would have required searching inquiry into religious beliefs and validity of beliefs and that inquiry was precluded by first amendment [U.S.C.A. Const.Amend.1].

5. Religious Societies **14**

Whether practitioner in religious healing and nurse trained in religious healing negligently or intentionally applied church doctrine was not a justiciable controversy.

6. Trusts **91**

A "constructive trust" arises by operation of law when circumstances of transaction are such that court finds it inequitable for legal owner to enjoy beneficial interest.

See publication Words and Phrases for other judicial constructions and definitions.

7. Trusts **95,102(1)**

A constructive trust will result when there is breach of fiduciary relationship or when fraud is proved.

8. Religious Societies **31(4)**
Trusts **91**

Executor of patient who submitted to religious healing treatments failed to set forth sufficient facts showing that practitioner of religious healing and nurse trained in religious healing were acting as agents under supervision and control of main church, and even if agency relationship existed, executor was unable to state any underlying actual misconduct against practitioner and nurse; therefore, property, which patient bequeathed to church, could not be held subject to constructive trust on basis that practitioner and nurse were acting as agents of church when they treated patient.

Hinshaw, Culbertson, Moelmann, Hoban & Fuller (Perry L. Fuller, D. Kendall Griffith, Milo W. Lundblad, Joanna C. New, of counsel), Chicago, for plaintiff-appellant Mary Baumgartner.

Wildman, Harrold, Allen & Dixon (Max Wildman, Robert E. Kehoe, Jr., Jane A. Zimmerman, of counsel), Chicago, for defendant-appellee The First Church of Christ Scientist.

Matthews, Dean, Simantz, Hem & Whitt (Stuart L. Whitt, Ronald M. Hem, Susan L. Schneider, of counsel), Aurora, for defendant-appellee The Northern Trust Co.

French, Rogers, Kezelis & Kominiarek (Richard G. French, Gilbert J. Rogers, Russell P. Veldenz, of counsel), Chicago, for defendant-appellee Tanner.

Presiding Judge BUCKLEY delivered the opinion of the court:

Plaintiff, Mary Baumgartner, as executor of the estate of John Baumgartner, deceased, brought an action for wrongful death against

The First Church of Christ, Scientist ("Mother Church"), Ruth L. Tanner, and the Northern Trust Company, as executor of the estate of Paul A. Erickson, deceased. Plaintiff's action arises out of Christian Science treatment rendered to decedent by Tanner and Erickson. Defendants filed a motion to strike and dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure. (Ill.Rev.Stat.1983, ch. 110, par. 2-619.) The motion was granted and plaintiff appeals. For the reasons set forth below, we affirm.

Initially, we observe that Christian Science is a widely known religion and courts will take judicial notice of its general teachings. *(Northern Trust Co. v. Commissioner of Internal Revenue* (7th Cir.1940), 116 F.2d 96, 98.) Its basic premise, as plaintiff acknowledges in her pleading, is that physical disease can be healed by spiritual means alone. As stated in an article on Christian Science from the Encyclopedia Britannica (15th ed., 1984, *Macropaedia,* vol. 4, pp. 562-64):

> "Christian Science is a religious denomination founded in the United States in 1879 by Mary Baker Eddy (1821-1910), author of the book that contains the definitive statement of its teaching, *Science and Health with Key to the Scriptures.* About one-third of its nearly 3,000 congregations are located in 56 countries outside the United States, with membership concentrated in areas with strong Protestant traditions. It is widely known for its practice of spiritual healing, an emphasis best understood in relation to its historical background and teaching.
>
> The cure of disease through prayer is seen as a necessary element in a full redemption from the flesh. Church historian Karl Holl summarizes the concept of treatment, or prayer, in Christian Science as 'a silent yielding of self to God, an ever closer relationship to God, until His omnipresence and love are felt effectively by man,' and he distinguishes this decisively from willpower or mental suggestion."

We further note that the present appeal is before this court on a motion to dismiss which admits all well-pleaded facts in plaintiff's complaint. *(Magana v. Elie* (1982), 108 Ill.App.3d 1028, 64 Ill.Dec. 511, 439 N.E.2nd 1319.) Consequently, in reviewing the arguments

on appeal, the following factual allegations contained in plaintiff's complaint are admitted as true.

Plaintiff's fourth amended complaint alleged that on October 13, 1974, the decedent, plaintiff's husband, contracted acute prostatitis. The illness manifested itself through severe pain in the groin area and the inability to urinate. Decedent immediately contacted Paul Erickson and advised him of his illness. Decedent requested that Erickson provide him with Christian Science treatment. Erickson, a Christian Science practitioner, had provided decedent with Christian Science healing on several prior occasions. He was also plaintiff's teacher and advisor on Christian Science. Erickson had been instructed by the Mother Church in the methods of Christian Science healing and was listed in *The Christian Science Journal*, a publication of the organization. By listing practitioners in the journal, the Mother Church certifies their training and competence.

Erickson came to decedent's home shortly after being contacted and administered hot baths and Christian Science treatment. Erickson also "massaged and manipulated" decedent's prostate gland. For the next several days, decedent's condition remained unchanged. Erickson therefore contacted defendant Ruth Tanner and directed her to go to decedent's home to assist in rendering Christian Science healing. Tanner was a Christian Science nurse certified by the Department of Care of the Mother Church and was also listed in its journal. Tanner proceeded to provide Christian Science treatment to decedent. Erickson called daily to check on decedent's condition and he visited frequently to provide healing.

Decedent's condition began to deteriorate. Plaintiff alleges that decedent decided he wanted medical treatment for his illness and that he no longer wished to be treated by Tanner and Erickson. She further alleges that when Tanner was advised of this request, he told decedent that he would die if a medical doctor was called and assured decedent that he was being cured by Christian Science healing. Decedent and plaintiff did not call in a medical doctor and instead continued with the Christian Science healing provided by Tanner and Erickson. Decedent's condition further deteriorated and he died on October 23, 1974, 10 days after he became ill.

At the time of his death, decedent had been a wealthy inventor and industrialist. He was survived by plaintiff and his two minor children. The complaint alleges that prior to his death, decedent changed his will at the insistence of Erickson and made the Mother Church a residual beneficiary of approximately one-half of his multi-million dollar estate.

Plaintiff thereafter initiated a wrongful death action against the Mother Church, Tanner, and Erickson, who is now deceased. The pleading before this court is plaintiff's fourth amended complaint which contains five counts. Count I alleges ordinary negligence, count II alleges intentional/reckless misconduct, count III seeks recovery for medical malpractice and count IV sets forth a Christian Science malpractice claim. Count V is directed only against the Mother Church for a constructive trust. The trial court dismissed the entire fourth amended complaint for failure to state a cause of action. The dismissal was based on first amendment grounds. On appeal, plaintiff challenges the dismissal of all five counts. The issues raised on appeal are matters of first impression in this State.

I.

[1] We first address the propriety of the trial court's dismissal of the count in plaintiff's complaint seeking recovery for medical malpractice. This claim is based on the premise that Erickson and Tanner were under a legal duty to comply with the standards of diagnosis and care that are imposed upon members of the medical profession even though they had been retained by decedent for Christian Science treatment. We find no merit to plaintiff's claim. Legislative and judicial distinctions between medical and spiritual treatment belie the existence of any such duty.

Our state legislature recognized the fundamental difference between spiritual treatment of human ailments and medical treatment when it enacted the Medical Practice Act (Ill.Rev.Stat.1983, ch. 111, par. 4474.) This Act exempts religious treatment from licensing, testing and other regulation. (Ill.Rev.Stat.1983, ch. 111, par. 4474.)

Specifically, section 4474 provides that the Act does not apply to "persons treating human ailments by prayer or spiritual means as an exercise or enjoyment of religious freedom." Similarly, nurses who provide "care of the sick where treatment is by prayer or spiritual means" are expressly exempt from the requirement that all nurses be licensed. (Ill.Rev.Stat.1983, ch. 111, par. 3402.) It follows that persons in these categories, exempt as a matter of public policy from the statutory framework which sets up standards for the medical profession, may not be held liable for failing to comply with medical standards to which they are not subject.

The argument that Christian Science practitioners should be held to medical standards has been expressly rejected by the New Hampshire Supreme Court. *(Spead v. Tomlinson* (1904), 73 N.H. 46, 59 A. 376.) There, the court affirmed a directed verdict for a Christian Science practitioner where the plaintiff sought to recover for medical malpractice. In so holding, the court noted that the plaintiff knew that the defendant was not a member of the regular school of physicians and did not practice according to its methods, but instead was a Christian Scientist and practiced according to the methods recognized by such healers. The *Spread* court reasoned:

> "* * * As is said in Story's Bailments, § 435: 'If a person will knowingly employ a common matmaker to weave or embroider a fine carpet, he must impute the bad workmanship to his own folly. So, if a man who has a disorder of his eye should employ a farrier to cure the disease, and he should lose his sight by using the remedy prescribed in such cases for horses, he would certainly have no legal ground of complaint.' And in cases involving the liability of medical practitioners courts have held that, 'If there are distinct and differing schools of practice, as allopathic, or old school, homeopathic, Thompsonian, hydropathic, or water cure, and a physician of one of those schools is called in, his treatment is to be tested by the general doctrines of his school, and not by those of other schools.' [Citations omitted.]" 59 A. 376, 378.

Our supreme court has adopted the key principle upon which the *Spead* decision was predicated: that a plaintiff may not

successfully establish a standard of care for one health care specialty offering the testimony of someone who practices a different specialty. *(Dolan v. Galluzzo)* (1979), 77 Ill.2d 279, 32 Ill.Dec. 900, 396 N.E.2d 13.) In *Dolan*, it was held that the standard care for a podiatrist may not be established through a physician or surgeon.

Here, plaintiff does not allege that Erickson or Tanner held themselves out to decedent as medical practitioners, nor that decedent expected or asked them to render medical treatment. As plaintiff concedes in her complaint, followers of Christian Science do not use medical aid to treat illness, but instead rely solely upon spiritual means. Decedent specifically requested Christian Science treatment when he became ill and could not have reasonably expected anything other than spiritual healing from Tanner and Erickson. There is no allegation that decedent was incompetent prior to his death. Viewing these facts and circumstances in light of the authorities cited above, we find that plaintiff cannot state a cause of action for medical malpractice.

II.

We next consider plaintiff's count based on a theory of Christian Science malpractice. Specifically, plaintiff alleges that Erickson and Tanner deviated from the standard of care of an ordinary Christian Science practitioner and nurse when they treated decedent. We find no basis for recovery under such a theory.

The United States Constitution dictates that the only entity with the authority and power to determine whether there has been a deviation from "true" Christian Science practice is the Christian Science Church itself. As the United States Supreme Court has held, the first amendment bars the judiciary from considering whether certain religious conduct conforms to the standards of a particular religious group. *(Thomas v. Review Board of Indiana Employment Security Division* (1981), 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624; *Serbian Eastern Orthodox Diocese for the United States of America v. Milivojevich* (1976), 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151.)

In *Thomas*, it was held that probing the proper interpretation of religious beliefs "is not within the judicial function and judicial competence" and that "[c]ourts are not arbiters of scriptural interpretation." (450 U.S. 707, 716, 101 S.Ct. 1425, 1431, 67 L.Ed.2d 624, 632.) Similarly, in the *Milivojevich* case, the United States Supreme Court reversed a decision by the Illinois Supreme Court, holding that the court improperly inquired into the propriety of the removal of a bishop from his post and the reorganization of the church diocese.

In Illinois, with the exception of *Milivojevich*, there has been a long standing reluctance on the part of our courts to adjudicate religious disputes. From very early on, Illinois courts have consistently declined to entertain cases involving the interpretation of religious doctrine. (See, *e.g.*, *Chase v. Cheney* (1871), 58 Ill. 509; *Fussell v. Hail* (1908), 233 Ill. 73, 84 N.E. 42; *Pfeifer v. Christian Science Committee on Publications* (1975), 31 Ill.App.3d 845, 334 N.E.2nd 876.) In *Chase*, our supreme court refused to become involved in the question of whether an Episcopal minister had deviated from the Book of Common Prayer. The *Chase* court stated:

> "* * * We do not aspire to become *de facto* heads of the church, and, by construction or otherwise, abrogate its laws and canons. We shall not inquire whether the alleged omission is any offense. *This is a question of ecclesiastical cognizance. This is no forum for such adjudication.* The church should guard its own fold; enact and construe its own laws; enforce its own discipline; and thus will be maintained the boundary between the temporal and spiritual power." (Emphasis added.) (58 Ill. 509, 535.)

The *Chase* court further observed that "[f]reedom of religious profession and worship can not be maintained, if the civil courts trench upon the domain of the church, construe its canons and rules, dictate its discipline, and regulate its trials." 58 Ill. 509, 537.

The *Chase* case was later cited in *Fussell v. Hail* (1908), 233 Ill. 73, 84 N.E. 42. In *Fussell*, the plaintiffs were members of the Cumberland Presbyterian Church and were opposed to the union of that church with the Presbyterian Church in the United States of America. The plaintiffs sought a declaration that Cumberland could

not, under the church constitution, consummate the union. The supreme court, in affirming the dismissal of the action, stated:

> "A court of chancery has no jurisdiction of the subject matter of this controversy. The object of the bill is to have a court of chancery, by its process, assume control of the action of an ecclesiastical tribunal, declare the extent of its jurisidiction, examine the regularity of its proceedings and revise its judgments. The civil courts deal only with civil or property rights. *They have no jurisdiction of religious or ecclesiastical controversies.* Our constitution says: 'The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed.' Such freedom of religious profession and worship cannot be maintained if the civil courts may interfere in matters of church organization, creed and discipline, construe the constitution, canons or rules of the church and regulate and revise its trials and the proceedings of its governing bodies. [Citations omitted.]" (Emphasis added.) (233 Ill. 73, 77, 84 N.E. 42.)

More recently, in *Pfeifer v. Christian Science Committee on Publications* (1975), 31 Ill.App.3d 845, 334 N.E.2d 876, this court followed *Chase* and *Fussell* when it affirmed the dismissal of a complaint alleging that a Christian Science practitioner's lessons deviated from the tenets of Christian Science. We held in *Pfeifer* that we lacked jurisdiction under the first amendment to determine whether the practitioner's teachings conformed to those of Christian Science founder Mary Baker Eddy. 31 Ill.App.3d 845, 846, 334 N.E.2d 876.

[2] As in each of the above mentioned cases, adjudication of the present case would require the court to extensively investigate and evaluate religious tenets and doctrines: first, to establish the standard of care of an "ordinary" Christian Science practitioner; and second, to determine whether Erickson and Tanner deviated from those standards. We believe that the first amendment precludes such an intrusive inquiry by the civil courts into religious matters.

At oral argument before this court, counsel for plaintiff acknowledged that any inquiry into Christian Science beliefs would be precluded by the first amendment. He urged, however, that defendants' conduct can be objectively evaluated by a court of law without such an

inquiry. In support of this contention, counsel relied on Article VIII, par. 23 of the Manual of The Mother Church which provides that "[i]f a member of this Church has a patient whom he does not heal, and whose case he cannot fully diagnose, he may consult with an M.D. on the anatomy involved." Significantly, this section does not require that a practitioner *must* consult with a medical doctor — it merely provides that he *may* do so. For a court of law to determine whether Erickson and Tanner violated the above tenet, it would first need to interpret the permissive language of this religious doctrine promulgated by the Mother Church. As noted above, an inquiry of this precise nature was expressly forbidden by this court in *Pfeifer v. Christian Science Board Committee on Publications* (1975), 31 Ill. App.3d 845, 334 N.E.2d 876.

Plaintiff in her brief relies on *Prince v. Massachusetts* (1944), 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645, *Cox v. New Hampshire* (1941), 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049, and *Reynolds v. United States* (1878), 98 U.S. (8 Otto) 145, 25 L.Ed. 244. In *Prince*, it was held that the use of children to sell church literature violated a statute prohibiting child labor. In *Cox*, the court held that parades for religious purposes did not excuse a church group from obtaining a permit. *Reynolds* held that the religious practice of polygamy violated state law.

We find each of the above cases distinguishable from the present case. In each instance, the wrongful conduct, although religiously motivated, could be analyzed without first evaluating the tenets of a particular religion. Moreover, the polygamous marriage bans were upheld in *Reynolds* because the practice consisted of overt acts determined to be deleterious to public morals and welfare. No such overt, immoral activity is involved in this case.

Plaintiff also cites *Jacobson v. Massachusetts* (1905), 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, where an individual's claim of exemption from compulsory small pox vaccination was denied because the state's interest in public health was superior. We find this case to be inapposite since society can protect itself from the danger of loathsome and contagious disease, an issue which is not now before us.

We find none of the above authorities cited by plaintiff to be persuasive analogy. The question of whether or not defendants deviated from the standard of care of an ordinary Christian Scientist is not a justiciable controversy. Accordingly, the trial court properly dismissed plaintiff's count seeking recovery for Christian Science malpractice.

III.

Next, we consider whether the trial court correctly dismissed plaintiff's count based on ordinary negligence. Plaintiff alleged that Erickson and Tanner were negligent because they failed to withdraw from treating decedent when requested to do so; failed to withdraw when they knew or should have known Christian Science treatment was not curing decedent; failed to consult a medical doctor when they knew or should have known Christian Science treatment was not curing decedent's illness; failed to consult a medical doctor when requested to do so and when they knew decedent was going to die without medical treatment; advised decedent not to obtain medical care; coerced decedent into not calling in a medical doctor; misrepresented to decedent that the Christian Science treatment was working; and breached a fiduciary relationship.

[3] To set forth a cause of action sounding in negligence, a plaintiff must allege the existence of a duty of reasonable care owed plaintiff by defendant, breach of that duty and injury proximately resulting from the breach. *(Magnone v. Chicago & North Western Transportation Co.* (1984), 126 Ill.App.3d 170, 81 Ill.Dec. 459, 466 N.E.2d 1261.) The existence of a duty is a matter of law, to be decided by the court. *(Barnes v. Washington* (1973), 56 Ill.2d 22, 305 N.E.2d 535.) In deciding whether a duty exists, the court is to consider the reasonable foreseeability of the injury, public policy and social requirements, the magnitude of the burden of guarding against injury and the consequences of placing that burden upon the defendant. *Morgan v. Dalton Management Co.* (1983), 117 Ill.App.3d ;815, 73 Ill.Dec. 313, 454 N.E.2d 57.

[4] Applying these principals to the case at hand, we find that plaintiff's negligence claim must fail. For the court to determine whether defendants breached any duty owed to decedent would require a searching inquiry into Christian Science beliefs and the validity of such beliefs. As established above, such an inquiry is precluded by the first amendment.

We recognize that plaintiff alleges in her complaint that Erickson and Tanner persuaded decedent and his family not to call in a medical doctor through "coercion" and "intimidation." Such allegations, however, are merely conclusionary. Plaintiff does not allege that decedent was not rational or mentally incompetent. Nor does she allege that decedent or herself was physically imprisoned by defendants and thus unable to contact a physician. The facts as alleged by plaintiff fail to show that the Christian Science treatment provided to decedent, a competent adult, was not a matter of his own choice and free will at all times prior to his death. Our supreme court has made it clear that a competent adult has the right under the first amendment to refuse medical treatment when it conflicts with his religious beliefs. *In re Estate of Brooks* (1965), 32 Ill.2d 361, 205 N.E.2d 435.

Accordingly, we conclude that plaintiff has failed to state a cause of action for negligence and that the trial court properly dismissed plaintiff's negligence count.

IV.

[5] We next consider plaintiff's count alleging that defendants acted with intentional or reckless disregard for decedent's health and safety. The allegations in this count are virtually identical to those in the count premised on ordinary negligence. Plaintiff merely added the words "acted intentionally or with reckless disregard." We believe that the same rationale which caused plaintiff's negligence count to fail also causes the intentional/reckless disregard count to fail. Whether or not defendants negligently or intentionally applied church doctrine is not a justiciable controversy.

[6, 7] Finally, we turn to the allegations in count V, which seeks to impose a constructive trust against the Mother Church. "A constructive trust is a device used by chancery to compel one who unfairly holds a property interest to convey that interest to another to whom it justly belongs." *(Sadacca v. Monhart* (1984), 128 Ill.App.3d 250, 255, 83 Ill.Dec. 463, 470 N.E.2d 589.) A constructive trust "arises by operation of law when the circumstances of a transaction are such that the court finds it inequitable for the legal owner to enjoy the beneficial interest." (128 Ill.App.3d 250, 255, 83 Ill.Dec. 463, 470 N.E.2d 589.) A constructive trust will result when there is a breach of a fiduciary relationship or when fraud is proved. *Williams v. Teachers Insurance & Annuity Association* (1973), 15 Ill.App.3d 542, 304 N.E.2d 656.

In the present case, plaintiff alleges in count V that the property which decedent bequeathed to the Mother Church is subject to a constructive trust because Erickson and Tanner were acting as agents of the Mother Church when they treated decedent. Plaintiff argues that the Mother Church is therefore liable for the misconduct of Erickson and Tanner under a theory of *respondeat superior.* Plaintiff in count V repeats the same allegations of misconduct set forth in her counts based on negligence and intentional/reckless disregard.

[8] Plaintiff's attempt to impose a constructive trust must fail. First, plaintiff has failed to set forth sufficient facts showing that Erickson and Tanner were acting as agents under the supervision and control of the Mother Church. It is held that the facts upon which an agent-principal relationship is based must be specifically pleaded. *(Kutner v. DeMassa* (1981), 96 Ill.App.3d 243, 51 Ill.Dec. 723, 421 N.E.2d 231.) Furthermore, even assuming the existence of an agency relationship, we have already held that plaintiff is unable to state any underlying actionable misconduct against Erickson and Tanner. As such, any action against the Mother Church based on an agency theory obviously must also fail. Consequently, the trial court correctly dismissed count V of plaintiff's fourth amended complaint.

For the foregoing reasons the judgment of the circuit court of Cook County is affirmed.

Affirmed.

LINN and CAMPBELL, JJ., concur.

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

June 3, 1986

Mr. Clark D. Pellett
Pellett, Lundblad & Baker
401 S. LaSalle St., S#1302
Chicago, IL 60605

No. 63336 — Mary Baumgartner, as Exr., etc., petitioner, v. The First Church of Christ, Scientist, etc., et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 25, 1986.

STATE OF ILLINOIS
COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY.
Illinois County Department
Law Division

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the decedent,
Plaintiffs

v.

THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (The Mother Church), a foreign corporation; THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased; and RUTH L. TANNER,
Defendants

No. 80 L 29451

FOURTH AMENDED COMPLAINT AT LAW

Now comes MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent, by and through her attorneys, HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER, and complaints of defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON (Paul A. Erickson) and RUTH L. TANNER, as follows:

COUNT I

1. Defendant, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), was founded by Mary Baker Eddy in 1879. Its basic premise is that physical disease can be healed by spiritual means alone. Followers of the religion do not use medical aid to treat illness and rely upon Christian Science healing.

2. The Mother Church trains practitioners and nurses who are sent out to heal illnesses among its members. Practitioners and nurses trained and approved by the Mother Church are listed in *The Christian Science Journal*, a publication of the organization. By listing practitioners and nurses in the *Journal*, The Mother Church certifies their training and competence.

3. Practitioners and nurses working in the field for The Mother Church are required to recruit new members for it and to solicit funds for The Church through donations or testamentary bequests.

4. Practitioners and nurses charge for healing services they render. They are professionals and they are expected by The Mother Church to earn their living from healing.

5. The practice of Christian Science healing by practitioners and nurses is directed and controlled by The Mother Church and they must follow specific guidelines, procedures and regulations promulgated by the Church when providing Christian Science treatment. Practitioners and nurses who fail to do so are disciplined by The Mother Church.

6. In October of 1974, defendant, PAUL A. ERICKSON, was a Christian Practitioner who had been instructed by The Mother Church in the ways of Christian Science healing and was listed in *The Christian Science Journal*. Erickson practiced Christian Science healing in and around Aurora, Illinois.

7. In October of 1974, defendant, RUTH L. TANNER, was a graduate Christian Science nurse certified by the Department of Care of the Mother Church. Tanner was listed in *The Christian Science Journal* and practiced Christian Science healing in and around Naperville, Illinois.

8. At all times when defendants ERICKSON and TANNER practiced Christian Science healing and in particular when they were treating JOHN BAUMGARTNER, they were acting as agents of The Mother Church under its supervision and control.

9. Prior to October of 1974, Ruth L. Tanner received a degree in medical nursing from Copley Memorial Hospital, Aurora, Illinois and, thereafter, she practiced her profession at Copley Memorial Hospital and in the Chicago area as a visiting nurse.

10. Prior to October 1974, Paul A. Erickson sought and obtained medical treatment for his own illnesses and injuries while holding himself out as being a Christian Science practitioner.

11. JOHN BAUMGARTNER was a wealthy inventor and industrialist. He founded the Anchor Brush Company that was formerly headquartered near Aurora, Illinois. At the time of his death in October of 1974, he was living near Plano, Illinois with his wife, Mary, and their two minor children, David and Debra.

12. Prior to October of 1974, Paul A. Erickson had treated JOHN BAUMGARTNER for minor illnesses and had counseled him on business and personal matters.

13. Prior to October of 1974, JOHN BAUMGARTNER's wife, Mary, had been a member of Erickson's association within the Church and he was her teacher and advisor on Christian Science.

14. Prior to October of 1974, JOHN BAUMGARTNER changed his Will at the insistence of PAUL ERICKSON and made The Mother Church a residual beneficiary of approximately one half of his estate

which was worth several million dollars. The Mother Church knew of the provisions of the Will and that it would receive a substantial sum of money at this death.

15. On October 13, 1974, JOHN BAUMGARTNER contracted acute prostatitis while driving his family home from a trip to St. Louis, Missouri. The illness manifested itself through severe pain in the groin area and the inability to urinate. Prostatitis can be treated medically through simple surgery and medication.

16. After arriving at his home near Plano, Illinois, JOHN BAUMGARTNER called PAUL ERICKSON, advised him of his illness, and requested ERICKSON to provide him with Christian Science treatment. ERICKSON had provided BAUMGARTNER with Christian Science healing on several other prior occasions.

17. ERICKSON came to the BAUMGARTNER home immediately that same night. He locked himself into a bathroom with the decedent and administered hot baths and Christian Science treatment to him. Erickson also massaged and manipulated JOHN BAUMGARTNER'S prostate gland.

18. For the next several days BAUMGARTNER'S condition remained unchanged. He continued to have severe pain in the groin area and he could not eliminate body wastes.

19. PAUL ERICKSON contacted RUTH TANNER and directed her to go to the BAUMGARTNER home to assist in treating the decedent. ERICKSON called daily to check on BAUMGARTNER'S condition and he visited frequently to provide treatment. TANNER also provided Christian Science treatment to the decedent.

20. On or about October 20, 1974, JOHN BAUMGARTNER asked Mary to inspect an opening he felt in his rectum. She looked and observed an internal organ protruding from a three inch opening in his rectum. RUTH TANNER was present and she placed a dressing on the wound made from sanitary napkins. She also instructed

MRS. BAUMGARTNER on how to clean the wound and to replace the dressing.

21. After the wound developed, JOHN BAUMGARTNER decided that he wanted medical treatment for his illness and that he no longer wished to be treated by Erickson and Tanner. The decedent asked his wife, Mary, to call in a physician and to advise Erickson and Tanner that he had withdrawn his consent to further treatment by them.

22. MARY BAUMGARTNER called Paul Erickson and advised him that the decedent wanted medical treatment for his illness and that she was going to call a physician in for him. She also requested Erickson and Tanner to withdraw from the case because JOHN BAUMGARTNER was withdrawing his consent to further treatment by them.

23. Erickson arrived at the BAUMGARTNER home within a few minutes after his telephone conversation with MRS. BAUMGARTNER. He took her into the kitchen of the home out of the presence of the decedent and shouted at her that he was the doctor, that she was his nurse and student and, as such, she was to follow his orders. His orders were that no medical doctor would be brought in to treat the decedent. Erickson threatened MRS. BAUMGARTNER that if she even talked to a physician, her husband would be sure to die and it would be her fault. Erickson told MRS. BAUMGARTNER that Christian Science treatment was curing the decedent.

24. Erickson went into the decedent's bedroom and repeated his threats to JOHN BAUMGARTNER that he would die if a medical doctor was called and Erickson told him that he was being cured by Christian Science healing.

25. ERICKSON and TANNER continued to treat MR. BAUMGARTNER and they continued to assure the BAUMGARTNERS that the decedent was being cured by their Christian Science treatment even though he had developed a three-inch hole near his rectum through which internal organs protruded.

26. No medical doctor was called in to treat MR. BAUMGARTNER. His condition continued to deteriorate and he died several days later.

27. MARY BAUMGARTNER paid the fees charged by TANNER and ERICKSON for their healing services.

28. Erickson and Tanner knew or should have known that JOHN BAUMGARTNER needed immediate medical treatment to survive his illness after a three-inch hole developed near his rectum out of which internal organs protruded.

29. That Erickson and Tanner knew or should have known that Christian Science healing was not and could not cure JOHN BAUMGARTNER after a three-inch hole developed near his rectum out of which internal organs protruded.

30. Defendants owed to JOHN BAUMGARTNER the duty of not interfering with his right to obtain medical care to protect his health and safety.

31. Defendants, each and every one, were guilty of one or more of the following wrongful acts and/or omissions of negligence:

(a) Failed to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Failed to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Failed to consult with a medical doctor when requested to do so.

(d) Failed to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew or should have known that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing BAUMGARTNER when they knew or should have known that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful Death Action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of the decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor

of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT II

1.—30. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 30 of Count I of this complaint as and for her allegations in paragraphs 1 through 30 of Count II of this complaint.

31. Defendants each and every one, acted intentionally or with reckless disregard to deprive JOHN BAUMGARTNER of medical care and to cause his death to gain substantial sums of money from his estate through one or more of the following wrongful acts:

(a) Refused to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Refused to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Refused to consult with a medical doctor when requested to do so.

(d) Refused to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing BAUMGARTNER when they knew that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing intentional or reckless wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT III

1. — 29. Plaintiff hereby adopts, reasserts, and realleges the allegations contained in paragraph 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. Defendants provided medical care to JOHN BAUMGARTNER by massaging and manipulating his prostate gland and by treating his open wound and therefore assumed voluntarily the duty to act in accordance with accepted standards of prevailing medical practice in the greater Chicago area in 1974.

31. Defendants each and every one, were guilty of the following wrongful acts and/or omissions of negligence:

a) Failed to diagnose and treat JOHN BAUMGARTNER'S illness;

b) Failed to consult with persons having greater medical knowledge and expertise concerning the illness of JOHN BAUMGARTNER;

c) Provided medical treatment without having received the requisite training and instruction in medicine;

d) Failed to provide proper medical treatment to JOHN BAUMGARTNER for prostatitis.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted

her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, pray for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT IV

1.—29. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. That defendants ERICKSON and TANNER had a duty to treat the decedent, JOHN BAUMGARTNER, in accordance with the accepted standards of prevailing Christian Science practice and opinion in the greater Chicago area in 1974, and, to exercise that degree of care and caution commonly exercised by other members of their profession in the community.

31. THAT PAUL A. ERICKSON and RUTH L. TANNER were then and there guilty of one or more of the following wrongful acts and/or omissions of carelessness and negligence:

a. Failed to consult with a medical doctor concerning the illness of JOHN BAUMGARTNER and the anatomy involved when they were unable to heal or cause an improvement in the Decedent's condition in violation of Article VIII, §23 of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts;

b. Ignored requests that a medical doctor be called in to examine and treat the Decedent's illness in violation of the ethics of Christian Science Practitioners and Christian Science Nurses;

c. Assured JOHN BAUMGARTNER and MARY BAUMGARTNER that there was nothing wrong with his physical condition when they knew or should have known it was fatally deteriorating;

d. Intimidated and coerced the BAUMGARTNERS and caused them to refrain from calling in a medical doctor to treat the Decedent;

e. Failed to consult with the medical doctor to treat the Decedent;

f. Failed to consult with a medical doctor concerning the Decedent's illness when they knew or should have known that their metaphysical treatment did not heal and was not causing any improvement in the Decedent's condition;

g. Failed to inform JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, of the seriousness of his physical ailments;

h. Advised JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, to abstain from seeking medical care for his illness; and

i. Failed to discontinue treatment after consent to it was withdrawn.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER

By: _____

Attorneys for plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Dec., on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent

69 West Washington Street
Chicago, Illinois 60602
630-4400

STATE OF ILLINOIS
COUNTY OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY,
Illinois County Department,
Law Division

MARY BAUMGARTNER, as the Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the decedent,

Plaintiffs

v.

THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (The Mother Church), a foreign corporation, et al.

Defendants

No. 80 L 29451

FOURTH AMENDED COMPLAINT AT LAW

COUNT V

1.—29. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count V of this complaint.

30. David and Debra Baumgartner are children and heirs of the decedent, JOHN BAUMGARTNER. David is 18 years old and Debra is 15 years old.

31. That Erickson and Tanner knew that Christian Science healing was not curing and could not cure John Baumgartner after a three-inch hole developed near his rectum out of which internal organs protruded.

32. The Mother Church through its agents, Erickson and Tanner, intentionally deprived John Baumgartner of medical care with the knowledge that John Baumgartner would die unless he received immediate medical treatment through the following acts:

(a) Refused to withdraw from treating John Baumgartner when requested to do so.

(b) Refused to withdraw from treating John Baumgartner after being requested to do so when they knew that Christian Science treatment was not curing the decedent's illness.

(c) Refused to consult with a medical doctor when requested to do so.

(d) Refused to consult with a medical doctor when they knew that John Baumgartner was going to die without immediate medical treatment.

(e) Advised John Baumgartner and his family not to obtain medical care when they knew that John Baumgartner was going to die without immediate treatment by a physician.

(f) Stopped John Baumgartner and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped John Baumgartner and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing Baumgartner when they knew that it was not and could not cure his illness.

(h) Stopped John Baumgartner and his family from calling in a medical doctor through abuse of their fiduciary relationships with the Baumgartners by controlling their minds and actions.

33. As a direct and proximate result of one or more of the foregoing intentional acts of The Mother Church through its agents Erickson and Tanner, no medical doctor was called in to treat John Baumgartner and he died on October 23, 1974.

33. As a direct and proximate result of one or more of the foregoing intentional acts of The Mother Church through its agents Erickson and Tanner, no medical doctor was called in to treat John Baumgartner and he died on October 23, 1974.

34. Under the terms of John Baumgartner's Will, The Mother Church has received $1,290,008.00 worth of property and will receive approximately more than $2.0 million worth of property in the near future when John Baumgartner's Estate is closed.

35. The Mother Church's receipt of property from the Baumgartner Estate is against the public policy of the State of Illinois because John Baumgartner's death was caused by the intentional wrongful acts of The Mother Church to deprive John Baumgartner of medical care when it knew that he would die without medical treatment. Therefore, as a matter of public policy The Mother Church should not be permitted to benefit from its wrongful conduct.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays that this court exercises its equitable powers to create a Constructive Trust over the money and property received and to be received by The First Church of Christ, Scientist, in Boston, Massachusetts, from the Estate of John Baumgartner, Deceased, to be held in Constructive Trust for the benefit of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the children and heirs of the decedent.

HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER

By: _____

Attorneys for plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of decedent

69 West Washington
Chicago, Illinois 60602
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Supreme Court, U.S.
FILED
SEP 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-335

In The
Supreme Court of the United States
October Term, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

v.

THE FIRST CHURCH OF CHRIST SCIENTIST in Boston, Mass. a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased and RUTH L. TANNER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT OF THE APPELLATE COURT STATE OF ILLINOIS

BRIEF FOR RESPONDENT RUTH L. TANNER IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the First Amendment bars plaintiff's cause action which questions the validity of the Christian Science religion.

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In The
Supreme Court of the United States
October Term, 1986

No. 86-335

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

v.

THE FIRST CHURCH OF CHRIST SCIENTIST in Boston, Mass. a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased and RUTH L. TANNER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT OF THE APPELLATE COURT STATE OF ILLINOIS

BRIEF FOR RESPONDENT RUTH L. TANNER IN OPPOSITION

TO: The Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Ruth L. Tanner, a Defendant herein, respectfully requests that a writ of certiorari not be issued to review the judgment and opinion of the First District Appellate Court, State of Illinois, entered in this case on March 4, 1986.

REASONS FOR DENYING THE WRIT

I

PLAINTIFF SEEKS TO LITIGATE THE TRUTH OR FALSITY OF CHRISTIAN SCIENCE BELIEF AND DEVIATIONS THEREFROM

Contrary to the impression Petitioner attempts to create, she presented an entirely different case to the trial court (the Circuit Court of Cook County, Illinois) and the Illinois Appellate Court, First District. In Count I of her Fourth Amended Complaint, she purports to state a claim in negligence. Count II raises the same allegations in willful and wanton misconduct. Count III attempted to state a medical malpractice claim and Count IV raised a purported claim concerning Christian Science malpractice in that Erickson and Tanner did not meet the standard of care for Christian Science nurses and practitioners in the greater Chicago area in 1974. As the Illinois Appellate Court, First District, recognized, Christian Science is a Christian religion which includes the healing of disease by spiritual means of prayer. It is based not only on faith but also a positive, consistent study and application of what its adherents understand to be spiritual law. An integral part of the Christian Science worship of God involves the systematic spiritual treatment of illness. S. John, J. Peterson, *Legal Status of Christian Science Treatment,* 1964, Med. Trial Tech. & Qu., 13, 14. Said treatment is rendered by Christian Science practitioners and Christian Science nurses, *Legal Status, at 15.* The cure of disease through prayer is seen as a necessary element in a full redemption from the flesh. The Christian Scientist utilizes prayer to obtain a closer relationship to God. Cure of an illness is a subsidiary benefit once the Christian Scientist has obtained a closer relationship with God. As the Illinois Appellate Court, First District, recognized, prayer to the Christian Scientist is distinctively different than will power or mental suggestion. *Baumgartner v. First Church of Christ,* 141 Ill. App. 3d 898, 900-901, 490 N.E.2d 1319 (1986).

In *United States v. Ballard,* 322 U.S. 78, 86-87, 88 L.Ed. 1148 (1944), this Court stated:

> "Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made subject before the law .... the Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisioned the widest possible toleration of conflicting views. Man's relation to his God is made no concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views is espoused by respondents may seem incredible, if not preposterous, to most people. But if these doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the trier of fact undertake that task, they enter a forbidden domain."

Thus, this Court and Illinois Courts have recognized that Civil Courts are incompetent to judge ecclesiastical matters. *Watson v. Jones,* 80 U.S. 679, 729, 13 Wall. 729, 20, L.Ed. 666 (1871); *Chase v. Cheney,* 58 Ill. 509, 535 (1871). As one California court has defined it, ecclesiastical matters refers to creeds and the proper mode of exercising one's belief, considerations of faith, including questions of what constitutes an essential of a church faith, and matters of church discipline, tenets, and general polity. *Metropolitan Baptist Church of Richmond, Inc. v. Younger,* 48 Cal. App. 3d 858, 121 Cal. Rptr. 899, 903 (1875). Thus, the courts do not interfere with hierarchical disputes such as whether the Serbian Orthodox Church arbitrarily defrocked a Bishop. *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713,

49 L.Ed. 2d 151, 96 S.Ct. 2372 (1976). Even property disputes cannot be litigated in the civil courts if it involves church doctrine. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449, 216, L.Ed. 2d 658, 89 S.Ct. 601 (1969).

In the instant case, instead of merely asserting a property right, Petitioner has alleged claims of negligence. Her Complaint does not stop at coercion, intimidation or threats to Petitioner and her husband when they allegedly chose to withdraw from Christian Science treatment. She also alleges that Erickson and Tanner knew that John Baumgartner "needed immediate medical treatment" and that "Erickson and Tanner knew or should have known Christian Science healing was not, and could not, cure John Baumgartner after a three-inch hole developed near his rectum." The Defendants are also charged with knowledge that Christian Science treatment was not curing his illness, knew that he was going to die without medical treatment, and misrepresenting to the Baumgartners that Christian Science treatment was working.

By making such contentions, Baumgartner clearly desires a civil forum to "try" Christian Science beliefs and tenets, the Defendants' convictions in those beliefs, or in the alternative, whether Erickson and Tanner deviated from the true tenets of that religion. The truthfulness of the Christian Science religion or the Defendants' belief in such religion is protected by the First Amendment. The Court would have to determine what constitutes a true belief in a religion and what does not. The Court will not inquire into the truth or falsity of a belief. *Ballard,* at 86-87.

No matter which claim one looks at, the tenets of Christian Science doctrine cannot be divorced from the civil proceedings. No matter how the Petitioner colors her claim, Christian Science permeates the claim. This Court has stated involvement with the doctrine of a religion and disputes arising thereunder is the equivalent of excessive entanglement of state and religion. *Serbian Orthodox Diocese*, at 709. Excessive

entanglement is the impermissible merging or intermeddling of a sphere of religion in government. *See, American Civil Liberties Union v. Rabun County Chamber of Commerce, Inc.*, 510 F.Supp. 866 (N.D. Ga., 1981).

This Court, or any secular court, must involve themselves with, and evaluate the tenets of the Christian Science religion in a claim such as the one brought by the Petitioner. For instance, the Federal and State courts instead of the church would now determine what constitutes religious healing and what constitutes conventional medical treatment not permitted by the religion.

Further, the Complaint reveals Baumgartner adhered to and practiced Christian Science. He specifically requested Christian Science treatment. Both Erickson and Tanner administered Christian Science treatment and faith to him. Even assuming *arguendo* that Baumgartner actually seeks to litigate a "tortious interference" theory against the Defendants, the courts will still need to examine church belief, doctrine, etc. Such an examination would be necessitated to determine whether John Baumgartner in fact repudiated his religion during the last hours of his life. In short, the Petitioner's argument, if accepted, means the courts involve themselves with and mandate the way the Christian Scientist chooses to worship God. This would inhibit the free development of religious doctrine and implicate the secular interest in matters of purely ecclesiastical concern. In other words, there would be a "chilling effect" on the Christian Scientists' worship of religion. Adherents to said religion would not and could not freely practice their religion with the threat of civil liability hanging over their heads. This would result in the destruction of the Christian Science faith by imposing a duty upon its believers in violation of what they believe to be spiritual law. A duty in this instance would destroy the Christian Scientists' right to freely worship God. Thus, the the claims raised by Petitioner are forbidden by the First Amendment of the United States Constitution (and, for that matter, its equivalent in the Illinois

Constitution, Article One, Section Three).

Finally, as the Illinois Appellate Court recognized, Plaintiff's allegations that Erickson and Tanner persuaded the Baumgartners not to seek medical help through "coercion" and "intimidation" were conclusionary. As the Court stated:

> "The facts as alleged by Plaintiff fail to show that the Christian Science treatment provided to decedent, a competent adult, was not a matter of his own choice and free will at all times prior to his death." *Baumgartner* at 908.

(A copy of the Fourth Amended Complaint is attached hereto as a courtesy to the Court).

II

THE STATE HAS NO COMPELLING INTEREST WHICH OVERRIDES DEFENDANTS' RELIGIOUS CONDUCT

While religious conduct can be regulated by the state for the protection of society, a mere rational relationship between the regulation proposed and the legitimate end sought is insufficient to restrict religious activities. *See, Founding Church of Scientology v. United States,* 409 F.2d 1146 (D.C. Cir. 1969). As stated by the Illinois Supreme Court, religious conduct is subject only to those laws which are imperatively necessary to protect society as a whole from grave and presently imminent dangers. *In Re Estate of Brooks,* 32 Ill. 2d 361, 371, 205 N.E.2d 435 (1965).

If Plaintiff's contentions were true, then the State of Illinois could have chosen to regulate the conduct of Christian Science practitioners and nurses much in the way it regulates medical doctors or nurses. *See, e.g.,* Ill. Rev. Stat., Ch. 111, §4401, *et. seq.* Yet, the Legislature, recognizing the religious nature of treating human ailments by prayer, exempts such conduct from the licensing requirements of the Medical License Act. Ill. Rev. Stat., Ch. 111, §4474.

Moreover, Petitioner is merely trying to vindicate her own alleged private wrong under the color of "state interest" in protecting the health and welfare of its citizens. She does not cite one case in which the state protects the interests of its citizens through the method of private, civil litigation. Each case cited by the Plaintiff to show how a state interest can override religious conduct involved the *state* acting, not a private person seeking a private remedy in the state courts. Therefore, even assuming that the state has an interest in regulating the conduct of overzealous Christian Science practitioners and nurses, it is the state who must act and not a private person bringing a civil lawsuit. In short, the police power of a state cannot be delegated to private persons.

Further, the state interest in the health and welfare of its citizens is not so compelling as to override religious conduct in the case at bar. The only life at stake was the life of John Baumgartner. Illinois has recognized that a competent adult may refuse medical treatment on religious grounds, even if he knows death will result, and the state cannot interfere unless there are sufficient grounds for a compelling state interest above and beyond the patient's own life. *In Re Estate of Brooks*, 32 Ill. 2d 361, 372-373, 205 N.E.2d 435 (1965). It must be imperatively necessary to protect society as a whole from grave and presently imminent dangers. *In Re Estate of Brooks*, at 371. The nature of John Baumgartner's illness did not subject or threaten society as a whole from grave and personally imminent dangers. Nor did the instant case involve a child or incompetent who had the inability to make his own choice of treatment and could understand the consequences of religious beliefs. On the other hand, generally imposing the kind of duty Plaintiff seeks on Christian Scientists would have a disruptive effect on the Christian Science religion. Therefore, no state interest overrode his choice of Christian Science treatment.

Petitioner also argues that other religions which provide health care are subject to government regulations. Yet, this

argument fails to recognize the essential difference between Christian Science and other religious denominations sponsoring and operating hospitals. As the Petitioner herself states, these hospitals provide *conventional* medical treatment. Such care and treatment is wholly divorced from the tenets or beliefs of a sponsoring religious denomination. On the other hand, Christian Science is a religion which includes the healing of disease by spiritual means of prayer. The Christian Scientist utilizes prayer to obtain a closer relationship to God. Accordingly, there would be a direct disruption of the Christian Science religion.

CONCLUSION

Respondent, Ruth L. Tanner, respectfully submits that the First District of the Illinois Appellate Court correctly determined that Plaintiff's claim is forbidden by the First Amendment of the United States Constitution. Further, the State had no compelling interest in protecting the health and welfare of its citizens by allowing a private person to litigate allegedly tortious conduct. A fair reading of her Complaint reveals that she, in essence, is seeking a civil forum to try the truth or falsity of the Christian Science belief, or that of the Defendants' faith. This is strictly forbidden by the First Amendment. Further, as demonstrated above, the state does not have such an interest in the health and welfare of a competent adult who freely chooses Christian Science religion such that an opinion by this Court to "draw the parameters" of the First Amendment is needed.

WHEREFORE, for all of the foregoing reasons, Defendant-Respondent, Ruth L. Tanner, respectfully prays that this Court deny the Petition for Writ of Certiorari to the First District of the Appellate Court, State of Illinois.

Respectfully Submitted,

RICHARD G. FRENCH
(Counsel of Record for Respondent,
Ruth L. Tanner)
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APPENDIX

STATE OF ILLINOIS

COUNT OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the decedent,

Plaintiffs

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (The Mother Church), a foreign corporation; THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased; and RUTH L. TANNER,

Defendants

No. 80 L 29451

FOURTH AMENDED COMPLAINT AT LAW

Now comes MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent, by and through her attorneys, HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER, and complains of defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON (Paul A. Erickson) and RUTH L. TANNER, as follows:

COUNT I

1. Defendant, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), was founded by Mary Baker Eddy in 1879. Its basic premise is that physical disease can be healed by spiritual means alone. Followers of the religion do not use medical aid to treat illness and rely upon Christian Science healing.

2. The Mother Church trains practitioners and nurses who are sent out to heal illnesses among its members. Practitioners and nurses trained and approved by the Mother Church are listed in *The Christian Science Journal,* a publication of the organization. By listing practitioners and nurses in the *Journal,* The Mother Church certifies their training and competence.

3. Practitioners and nurses working in the field for The Mother Church are required to recruit new members for it and to solicit funds for The Church through donations or testamentary bequests.

4. Practitioners and nurses charge for healing services they render. They are professionals and they are expected by The Mother Church to earn their living from healing.

5. The practice of Christian Science healing by practitioners and nurses is directed and controlled by The Mother Church and they must follow specific guidelines, procedures and regulations promulgated by the Church when providing Christian Science treatment. Practitioners and nurses who fail to do so are disciplined by The Mother Church.

6. In October of 1974, defendant, PAUL A. ERICKSON, was a Christian Practitioner who had been instructed by The Mother Church in the ways of Christian Science healing and was listed in *The Christian Science Journal.* Erickson practiced Christian Science healing in and around Aurora, Illinois.

7. In October of 1974, defendant, RUTH L. TANNER, was a graduate Christian Science nurse certified by the

Department of Care of the Mother Church. Tanner was listed in *The Christian Science Journal* and practiced Christian Science healing in and around Naperville, Illinois.

8. At all times when defendants ERICKSON and TANNER practiced Christian Science healing and in particular when they were treating JOHN BAUMGARTNER, they were acting as agents of The Mother Church under its supervision and control.

9. Prior to October of 1974, Ruth L. Tanner received a degree in medical nursing from Copley Memorial Hospital, Aurora, Illinois and, thereafter, she practiced her profession at Copley Memorial Hospital and in the Chicago area as a visiting nurse.

10. Prior to October 1974, Paul A. Erickson sought and obtained medical treatment for his own illnesses and injuries while holding himself out as being a Christian Science practitioner.

11. JOHN BAUMGARTNER was a wealthy inventor and industrialist. He founded the Anchor Brush Company that was formerly headquartered near Aurora, Illinois. At the time of his death in October of 1974, he was living near Plano, Illinois with his wife, Mary, and their two minor children, David and Debra.

12. Prior to October of 1974, Paul A. Erickson had treated JOHN BAUMGARTNER for minor illnesses and had counseled him on business and personal matters.

13. Prior to October of 1974, JOHN BAUMGARTNER's wife, Mary, had been a member of Erickson's association within the Church and he was her teacher and advisor on Christian Science.

14. Prior to October of 1974, JOHN BAUMGARTNER changed his Will at the insistence of PAUL ERICKSON and made The Mother Church a residual beneficiary of approximately one half of his estate which

was worth several million dollars. The Mother Church knew of the provisions of the Will and that it would receive a substantial sum of money at his death.

15. On October 13, 1974, JOHN BAUMGARTNER contracted acute prostatitis while driving his family home from a trip to St. Louis, Missouri. The illness manifested itself through severe pain in the groin area and the inability to urinate. Prostatitis can be treated medically through simple surgery and medication.

16. After arriving at his home near Plano, Illinois, JOHN BAUMGARTNER called PAUL ERICKSON, advised him of his illness, and requested ERICKSON to provide him with Christian Science treatment. ERICKSON had provided BAUMGARTNER with Christian Science healing on several other prior occasions.

17. ERICKSON came to the BAUMGARTNER home immediately that same night. He locked himself into a bathroom with the decedent and administered hot baths and Christian Science treatment to him. Erickson also massaged and manipulated JOHN BAUMGARTNER'S prostate gland.

18. For the next several days BAUMGARTNER'S condition remained unchanged. He continued to have severe pain in the groin area and he could not eliminate body wastes.

19. PAUL ERICKSON contacted RUTH TANNER and directed her to go to the BAUMGARTNER home to assist in treating the decedent. ERICKSON called daily to check on BAUMGARTNER'S condition and he visited frequently to provide treatment. TANNER also provided Christian Science treatment to the decedent.

20. On or about October 20, 1974, JOHN BAUMGARTNER asked Mary to inspect an opening he felt in his rectum. She looked and observed an internal organ protruding from a three inch opening in his rectum. RUTH TANNER was present and she placed a dressing on the

wound made from sanitary napkins. She also instructed MRS. BAUMGARTNER on how to clean the wound and to replace the dressing.

21. After the wound developed, JOHN BAUMGARTNER decided that he wanted medical treatment for his illness and that he no longer wished to be treated by Erickson and Tanner. The decedent asked his wife, Mary, to call in a physician and to advise Erickson and Tanner that he had withdrawn his consent to further treatment by them.

22. MARY BAUMGARTNER called Paul Erickson and advised him that the decedent wanted medical treatment for his illness and that she was going to call a physician in for him. She also requested Erickson and Tanner to withdraw from the case because JOHN BAUMGARTNER was withdrawing his consent to further treatment by them.

23. Erickson arrived at the BAUMGARTNER home within a few minutes after his telephone conversation with MRS. BAUMGARTNER. He took her into the kitchen of the home out of the presence of the decedent and shouted at her that he was the doctor, that she was his nurse and student and, as such, she was to follow his orders. His orders were that no medical doctor would be brought in to treat the decedent. Erickson threatened MRS. BAUMGARTNER that if she even talked to a physician, her husband would be sure to die and it would be her fault. Erickson told MRS. BAUMGARTNER that Christian Science treatment was curing the decedent.

24. Erickson went into the decedent's bedroom and repeated his threats to JOHN BAUMGARTNER that he would die if a medical doctor was called and Erickson told him that he was being cured by Christian Science healing.

25. ERICKSON and TANNER continued to treat MR. BAUMGARTNER and they continued to assure the BAUMGARTNERS that the decedent was being cured by their Christian Science treatment even though he had devel-

oped a three-inch hole near his rectum through which internal organs protruded.

26. No medical doctor was called in to treat MR. BAUMGARTNER. His condition continued to deteriorate and he died several days later.

27. MARY BAUMGARTNER paid the fees charged by TANNER and ERICKSON for their healing services.

28. Erickson and Tanner knew or should have known that JOHN BAUMGARTNER needed immediate medical treatment to survive his illness after a three-inch hole developed near his rectum out of which internal organs protruded.

29. That Erickson and Tanner knew or should have known that Christian Science healing was not and could not cure JOHN BAUMGARTNER after a three-inch hole developed near his rectum out of which internal organs protruded.

30. Defendants owed to JOHN BAUMGARTNER the duty of not interfering with his right to obtain medical care to protect his health and safety.

31. Defendants, each and every one, were guilty of one or more of the following wrongful acts and/or omissions of negligence:

(a) Failed to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Failed to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Failed to consult with a medical doctor when requested to do so.

(d) Failed to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew or should

have known that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing BAUMGARTNER when they knew or should have known that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful Death Action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of the decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased,

and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT II

1. – 30. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 30 of Count I of this complaint as and for her allegations in paragraphs 1 through 30 of Count II of this complaint.

31. Defendants, each and every one, acted intentionally or with reckless disregard to deprive JOHN BAUMGARTNER of medical care and to cause his death to gain substantial sums of money from his estate through one or more of the following wrongful acts:

(a) Refused to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Refused to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Refused to consult with a medical doctor when requested to do so.

(d) Refused to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing

BAUMGARTNER when they knew that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing intentional or reckless wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT III

1. – 29. Plaintiff hereby adopts, reasserts, and realleges the allegations contained in paragraph 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. Defendants provided medical care to JOHN BAUMGARTNER by massaging and manipulating his prostate gland and by treating his open wound and therefore assumed voluntarily the duty to act in accordance with accepted standards of prevailing medical practice in the greater Chicago area in 1974.

31. Defendants each and every one, were guilty of the following wrongful acts and/or omissions of negligence:

a) Failed to diagnose and treat JOHN BAUMGARTNER'S illness;

b) Failed to consult with persons having greater medical knowledge and expertise concerning the illness of JOHN BAUMGARTNER;

c) Provided medical treatment without having received the requisite training and instruction in medicine;

d) Failed to provide proper medical treatment to JOHN BAUMGARTNER for prostatitis.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illnois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, pray for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT IV

1. - 29. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. That defendants ERICKSON and TANNER had a duty to treat the decedent, JOHN BAUMGARTNER, in accordance with the accepted standards of prevailing Christian Science practice and opinion in the greater Chicago area in 1974, and, to exercise that degree of care and caution commonly exercised by other members of their profession in the community

31. THAT PAUL A. ERICKSON and RUTH L. TANNER were then and there guilty of one or more of the following wrongful acts and/or ommissions of carelessness and negligence:

a. Failed to consult with a medical doctor concerning the illness of JOHN BAUMGARTNER and the anatomy involved when they were unable to heal or cause an improvement in the Decedent's condition in violation of Article VIII, §23 of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts;

b. Ignored requests that a medical doctor be called in to examine and treat the Decedent's illness in viola-

tion of the ethics of Christian Science Practitioners and Christian Science Nurses;

c. Assured JOHN BAUMGARTNER and MARY BAUMGARTNER that there was nothing wrong with his physical condition when they knew or should have known it was fatally deteriorating;

d. Intimidated and coerced the BAUMGARTNERS and caused them to refrain from calling in a medical doctor to treat the Decedent;

e. Failed to consult with the medical doctor to treat the Decedent;

f. Failed to consult with a medical doctor concerning the Decedent's illness when they knew or should have known that their metaphysical treatment did not heal and was not causing any improvement in the Decedent's condition;

g. Failed to inform JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, of the seriousness of his physical ailments;

h. Advised JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, to abstain from seeking medical care for his illness; and

i. Failed to discontinue treatment after consent to it was withdrawn.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall

County, Illnois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

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By: _____
Attorneys for plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Dec., on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent

69 West Washington Street
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STATE OF ILLINOIS
COUNTY OF COOK

The undersigned, after being first duly sworn on oath deposes and says that she served the above and foregoing FOURTH AMENDED COMPLAINT AT LAW be depositing in the U.S. Mail Chute at 69 W. Washington Street, Chicago, Illinois a true and correct copy thereof, in a sealed envelope, first class postage prepaid, addressed to: WILDMAN, HARROLD, ALLEN & DIXON, One IBM Plaza, Chicago, IL French, Rogers, Kezelis & Kominiarek, 33 North Dearborn, Chicago, IL Matthews, Dean & Eichmeier, P.O. Box 1304, Aurora, IL 60507

on the 23rd day of February, 1983

Subscribed ad Sworn to before
me this 23rd day of February,
1983.

NOTARY PUBLIC

Supreme Court, U.S.
FILED
SEP 29 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-335

In The
Supreme Court of the United States
October Term, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST in Boston, Massachusetts, a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased, and RUTH L. TANNER

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

CHURCH'S RESPONSE IN OPPOSITION

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Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE FIRST DISTRICT APPELLATE COURT, STATE OF ILLINOIS.

CHURCH'S RESPONSE IN OPPOSITION

SUMMARY OF ARGUMENT

Petitioner's common law claim for wrongful death was dismissed on the pleadings by the Illinois courts. It alleges that the Christian Science church is liable for malpractice (medical or religious) for spiritually treating the plaintiff's decedent instead of deferring to medical care. While freedom of religion is a consideration justifying Illinois' refusal to recognize this cause of action, this case does not have a significant constitutional dimension. The decedent was a competent adult who

freely pursued Christian Science spiritual treatment for his illness. Indeed, because of the posture of the case, the record does not even permit a fair and full consideration of what Christian Science actually involves.

This Court has consistently held that the tenets of a religion and the beliefs of its followers are not subject to judicial scrutiny. The decisions in this case do not conflict with prior decisions of this Court and there is no need for the Court to use this case as a means for issuing further guidance in this area.

REASONS FOR DENYING THE PETITION

I. The Nature of the Case.

By its very nature this case is ill-suited for review by this Court.

John Baumgartner was a life long Christian Scientist. At the time of his death, he was receiving Christian Science treatment for prostatitis. His widow now alleges he could have been cured if he had pursued medical care instead.

Plaintiff's wrongful death case was dismissed by the Illinois courts, and the case arises on the pleadings. Although the allegations erroneously describe the Church's organization and practices, and the events at issue, the Church has had no opportunity to respond factually - - in particular to clarify what Christian Science actually involves. However, the Illinois appellate court did dismiss the complaint's conclusions as to "coercion" and "intimidation," and the case comes to this Court simply as a claim for medical malpractice or spiritual malpractice.

Because John Baumgartner was a competent adult who chose Christian Science treatment as a matter of his own free will, the Illinois courts declined to recognize a cause of action. This case concerns nothing more than the established right of a competent adult to forego medical treatment when it conflicts

with his religious beliefs. *In re Estate of Brooks* (1965), 32 111.2d 361, 205 N.E.2d 435.

The posture of the case does not permit the Court to address accurately the doctrines of Christian Science (which petitioner acknowledges to be a very wide-spread and well established religion). Since John Baumgartner was a competent adult, the facts do not even raise the interplay among religion, health care, and infants (or other incompetents).

II. The Law Does Not Need to Be Settled.

The case does not give rise to any novel issues that merit this Court's attention.

A. Existing Law Provides Ample Guidelines.

Both the trial court and the appellate court experienced little difficulty in disposing of this case. The Illinois Supreme Court even declined to consider an appeal from the lower appellate court. The clarity and consistency of this Court's past decisions gave ample guidelines.

In *United States v. Ballard*, 322 U.S. 78, 86 (1944), this Court wrote that the First Amendment "embraces the right to maintain theories of life and death and of the hereafter which are rank heresy to followers of orthodox faiths . . . " and that "Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs." Later, in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) this Court held that the First and Fourteenth Amendments precluded a civil court's inquiry into a religious organization's rules, regulations, and machinery to determine if the conduct of its governing body was legal. Finally, in *Thomas v. Review Board of the Indiana Employment Security Division*, 450 U.S. 707 (1981) this Court firmly held to its position that the resolution of what is a religious belief does not turn upon a judicial perception of that particular belief or practice in question. Religious beliefs, the Court explained, need not be acceptable, logical, consistent, or comprehensive to others in order to merit First Amendment protection.

B. This Court's Guidance Has Allowed Lower Courts to Decide Similar Issues.

The guidelines laid out above have, on more than one occasion, allowed lower courts to decide similar issues. Because the lower courts have experienced little difficulty with these guidelines this Court need not expand upon the topic in order to assist the lower courts.

In *Founding Church of Scientology of Washington v. U.S.*, 409 F.2d 1146 (D.C. Cir.) *cert. denied*, 396 U.S. 963 (1969), the circuit court held, on the basis of *Ballard,* that literature setting forth religious doctrines, and related to an instrument used in "auditing" or treating religious adherents, could not be subjected to courtroom evaluation and therefore could not be considered false or misleading labeling. Because the literature could not be deemed false or misleading without an inquiry into the tenets of the religion, *Ballard,* precluded the evaluation of the literature.

Similarly, because the claim of medical malpractice cannot be evaluated without an analysis of the veracity of the doctrine of spiritual healing, *Ballard* obviously forecloses petitioner's action.

In *Pfeifer v. Christian Science Committee on Publications,* 31 Ill.App.3d 845, 334 N.E.2d 876 (1st Dist. 1975), an Illinois appellate court held, on the basis of this Court's decision in *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440 (1969), that it lacked jurisdiction to make factual determinations as to whether particular teachings were in conformity with those of the founder of the Church. Because the suit could not be resolved without such an inquiry, the case was dismissed.

C. The First Amendment is Not Crucial to the Case

Because the ultimate question is whether Illinois common law should recognize a claim for medical malpractice or spiritual malpractice on the facts of this case, the petitioner's

claims may be dismissed without invoking the protection of the First Amendment.

Illinois has expressly declined to impose the duty of *medical* care upon *religious* healers. The Illinois legislature has exempted religious treatment from licensing, testing, and other regulation under the Medical Practice Act. Ill. Rev. Stat. 1983, ch. 111, par. 4474. Specifically, the statute exempts "persons treating human ailments by prayer or spiritual means as an exercise of religious freedom." The distinction drawn by the Act recognizes the fundamental difference between spiritual and medical treatment of human ailments. Illinois has decided that persons who are exempt as a matter of public policy from the statutory framework which sets up standards for the medical profession may not be held liable for failing to comply with medical standards.

Petitioner's claim of Christian Science malpractice may also be dismissed without the aid of the First Amendment. Petitioner alleges a wrongful deviation from Article VIII, par. 23 of the Manual of The Mother Church which provides that "[i]f a member of this Church has a patient whom he does not heal, and whose case he cannot fully diagnose, he may consult with an M.D. on the anatomy involved." The appellate court recognized the problems inherent in a civil court trying to ascertain precisely what such church principles might mean. On its face the rule is quite permissive, but is it prudent for lay people to make such religious determinations? Even if the First Amendment did not automatically prohibit such judicial inquiry, Illinois has recognized that the courts "do not aspire to become *de facto* heads of the Church," *Chase v. Cheney* (1871) 58 Ill. 509, 535.

D. This Case Presents No Socially Significant Question of Law

The issues involved in this case present no need for further social regulation. Where a competent, knowing individual requests a particular religious treatment, the state and the courts should not interfere. Although petitioner cites cases

from California, Michigan, and Indiana as questioning the need for increased governmental regulation of religious treatment, those cases are easily distinguished. The issue in each one of the cited cases was whether or not parents who, based on *their own* religious beliefs, neglected to seek medical aid for their minor children should be liable for the death or injury of their children. Here, in sharp contrast, an entirely competent adult chose to follow *his own* beliefs and requested Christian Science treatment for himself.

III. This Case Presents No Conflict In The Law.

This Court has consistently held that a civil court may not look behind or examine the beliefs of a particular religion. The decisions in *Prince v. Massachusetts*, 321 U.S. 158 (1944), *Cox v. New Hampshire*, 312 U.S. 569 (1941) and *Reynolds v. United States*, 98 U.S. (8 Otto) 145 (1878) established the clearly distinct principle that the practices of a religion may be regulated when such practices can be analyzed without first evaluating the tenets of that religion or the beliefs of its followers.

The present case is not in conflict with these decisions, since the conduct complained of - - the rendering of Christian Science healing - - cannot be analyzed without first adjudicating the veracity of the beliefs of the Christian Science Church. The decisions of the lower courts in the present case are therefore not in conflict with this Court's prior decisions.

CONCLUSION.

The petition for a writ of certiorari should be denied because the nature of this case does not warrant the attention of this Court, there is no need for new law and the dismissal below is in harmony with existing law.

Respectfully Submitted,

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No. 86-335

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

VS.

THE FIRST CHURCH OF CHRIST, SCIENTIST in Boston, Massachusetts, a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased, and RUTH L. TANNER,

Respondents.

On Petition For Writ Of Certiorari To The First District Appellate Court, State Of Illinois

BRIEF IN OPPOSITION FOR RESPONDENT, THE NORTHERN TRUST COMPANY

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No. 86-335

IN THE

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OCTOBER TERM, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

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Respondents.

On Petition For Writ Of Certiorari To The First District Appellate Court, State Of Illinois

BRIEF IN OPPOSITION FOR RESPONDENT, THE NORTHERN TRUST COMPANY

Respondent, The Northern Trust Company, as Executor of the Estate of Paul A. Erickson, Deceased, respectfully prays that the Petition for Writ of Certiorari to review the judgment and opinion of the First District Appellate Court of Illinois in this cause be denied.

REASONS FOR DENYING THE WRIT

I.

THE UNITED STATES SUPREME COURT SHOULD NOT INVOKE JURISDICTION TO REVIEW THE DECISION RENDERED BY THE ILLINOIS APPELLATE COURT ON ILLINOIS COMMON-LAW PRINCIPLES.

Petitioner claims to invoke this Court's jurisdiction under 28 U.S.C. §1257(3). In her five-count Fourth Amended Complaint, however, petitioner asserts her right to recover money damages for common-law negligence, medical malpractice, Christian Science malpractice, intentional misconduct and constructive trust. Petitioner has asserted her "right" to relief under these five common-law theories in her appeals in the Illinois courts and continues to assert this "right" in her Petition for Writ of Certiorari before this Court. Petitioner's assertions have not in the past and do not now present a federal question proper for review by this Court.

The Illinois trial court dismissed each of petitioner's five counts because each failed to state a cause of action under Illinois common-law principles. The medical malpractice count fell because petitioner failed to allege that the respondents held themselves out to decedent as medical doctors and failed to allege that decedent asked or expected respondents to render medical treatment. The Christian Science malpractice claim was defeated because it failed to present a justiciable controversy under Illinois law. Petitioner's ordinary negligence and intentional misconduct counts were dismissed because she failed to allege that decedent was incompetent. Finally, the count for constructive trust failed because petitioner did not set forth sufficient facts to show that Paul Erickson and Ruth

Tanner were acting as agents of the Church and further failed to show any underlying actionable misconduct by Erickson or Tanner.

It is well-settled that where a state court has decided the case upon a sufficient nonfederal ground, the United States Supreme Court will not take jurisdiction to review that decision for federal error. *E.g., Super Tire Engineering Co. v. McCorkle,* 550 F.2d 903 (3d Cir. 1977), *cert. denied,* 434 U.S. 827 (1977), *reh'g denied,* 434 U.S. 1025 (1978).

Since the Illinois Appellate Court decided this case on Illinois common-law principles, this respondent respectfully submits that the Supreme Court need not determine whether the state court properly acknowledged the parties' freedom to exercise their religion under the First Amendment of the United States Constitution.

II.

THE DECISION OF THE ILLINOIS APPELLATE COURT DOES NOT CONFLICT WITH PRINCIPLES ESTABLISHED BY THE UNITED STATES SUPREME COURT.

Petitioner's claim for money damages from the respondents failed because she did not allege facts sufficient to raise a valid cause of action under Illinois common-law principles. Now petitioner is claiming that dismissal of her Fourth Amended Complaint and its affirmation by the Illinois Appellate Court conflict with several decisions of the United States Supreme Court. This assertion must also fail for the simple reason that petitioner's Complaint never alleged the existence of a compelling state interest sufficient to warrant the courts' involvement in the Christian Science faith.

Religious conduct can be regulated or curtailed only where there is a paramount or compelling state interest. *Bob Jones University v. United States*, 461 U.S. 574 (1983). In *Bob Jones*, this Court determined that the government has a fundamental interest in eradicating racial discrimination which must take precedence over a school's claim to tax-exempt status as a religious institution.

Similarly, it has been settled that a state, as *parens patriae*, may order medical treatment to save the life of a child notwithstanding the parents' religious objections to the treatment. This concept pervades several cases recently decided by or currently pending in various state courts. *Walker v. Superior Court (People)*, 222 Cal. Rptr. 87 (Cal. App. 3 Dist. 1986), *petition for review granted*, 224 Cal. Rptr. 340, 715 P.2d 260 (1986); *Bergmann v. State*, 486 N.E.2d 653 (Ind. App. 4 Dist. 1985); *Rippberger v. Superior Court (People), appeal docketed*, No. 24997 (Cal. March 27, 1986); *Brown v. First Church of Christ, Scientist*, No. 73903 (Mich. App.).

However, this case in no way involves the issue of racial discrimination. Moreover, John Baumgartner was not a tender infant but a competent middle-aged adult, fully capable of consulting a physician had he so desired. No public policy similar to that in *Bob Jones* or the *parens patriae* cases is present in the case at bar, as the state has no compelling interest in regulating a competent adult's decision to exercise his chosen religion. Therefore, the cases cited by petitioner are totally inapposite.

Petitioner also relies upon *St. Elizabeth Hospital v. N.L.R.B.*, 715 F.2d 1193 (7th Cir. 1983). There the United States Court of Appeals for the Seventh Circuit determined that a religiously affiliated hospital was engaged primarily in the secular activity of providing health care

services to the general public, and, therefore, involvement of the N.L.R.B. in mediating collective bargaining questions did not violate the hospital's First Amendment rights. The court also recognized, however, that where the primary function of an institution is integrally related to its religious mission, the First Amendment precludes government interference. 715 F.2d at 1196. Petitioner's Complaint fails to allege facts which would remove John Baumgartner's relationship with his Christian Science practitioner, Paul Erickson, from their religious mission as members of the Christian Science faith. By petitioner's own rendition of the facts, it is evident that Paul Erickson had ministered to John Baumgartner for many years. It is further evident that John Baumgartner had voluntarily requested Christian Science ministry throughout his last illness. In meeting with his Christian Science practitioner, John Baumgartner was engaging in a very private and very personal religious experience. Clearly, there was no secular activity comparable to that encountered in *St. Elizabeth Hospital.*

Nor does the conduct of which petitioner complains fall within the principles enunciated in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). In *Jacobson*, this Court concluded that recognition of an individual's claim to exemption from small pox vaccination for religious reasons would have serious life-risking consequences for the general public. Under such circumstances, government intervention is justified. In contrast, John Baumgartner's decision to deal with his affliction through his Christian Science faith affected no one but himself. Petitioner has never claimed that John Baumgartner's decision and Paul Erickson's ministry had any consequences for the general public. Indeed, "[t]his case, of course, is not one in which any harm to the physical or mental health of [a] child or to the

public safety, peace, order or welfare has been demonstrated or may be properly inferred." *Wisconsin v. Yoder*, 406 U.S. 205, 230 (1972).

III.

THE FIRST AMENDMENT PROTECTS THE RELIGIOUS ACTIVITIES OF JOHN BAUMGARTNER AND THE RESPONDENTS.

Petitioner phrases the question before this Court as follows: "whether the First Amendment protects religious faith healers and their Church from tort liability for causing the death of a patient through their wrongful treatment". Petitioner's Brief for Certiorari at 6. Presentation of the question in this manner makes two erroneous assumptions.

First, it presupposes that Christian Scientists fall into the generic category labeled "faith healers". This simply is not true since Christian Scientists do not believe that diligent prayer will necessarily or automatically cure their physical illnesses. When a Christian Scientist experiences illness or disease, he may contact a Christian Science practitioner. The practitioner will, upon request of the member of the faith, meet with that person and assist him in strengthening his spiritual oneness with God. The presence or absence of any healing process is not indicative of one's success or failure in attaining spiritual oneness with God. "That which we desire and for which we ask, it is not always best for us to receive. In this case infinite Love [*i.e.*, God] will not grant the request." Eddy, *Science and Health with Key to the Scriptures*, 10 (1971).

Second, petitioner's question suggests that a civil court has the authority and ability to determine what constitutes "wrongful" practice of the Christian Science faith.

The Illinois courts declined to become embroiled in the interpretation of religious beliefs, principles, canons and rules of the First Church of Christ, Scientist. Furthermore, the Illinois courts specifically found that the First Amendment negated their authority to make such an inquiry.

In *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich*, 426 U.S. 696 (1976), this Court noted that it is the essence of religion that decisions of faith are reached and accepted even when they are not rational or measurable by objective criteria. 426 U.S. at 714-715. A person's way of life rooted in deep religious belief has the protection of the First Amendment. *Yoder*, 406 U.S. at 215. Petitioner's own well-pleaded facts demonstrate that John Baumgartner's interaction with Paul Erickson throughout his last illness was one deeply rooted in their religious beliefs. Recognition of petitioner's cause of action will not only infringe upon the freedom to exercise the Christian Science faith but will also destroy the faith itself.

In *Yoder*, this Court made it clear that religiously grounded conduct may fall within the protection of the Free Exercise Clause of the First Amendment. 406 U.S. at 219. There, this Court held that Wisconsin's interest in compulsory education did not warrant intrusion into the established religious practices of the Amish. Here, Illinois has no interest in recognizing a private cause of action in tort which will invade the beliefs of all Christian Scientists and compel them to modify the decisions by which they live their daily lives.

This Court's opinion in *United States v. Ballard*, 322 U.S. 78, 86-87 (1944) is particularly appropriate here:

"Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain."

CONCLUSION

For the reasons set forth herein, The Northern Trust Company, as Executor of the Estate of Paul A. Erickson, Deceased, respectfully requests that the Petition for Writ of Certiorari to review the judgment and opinion of the First District Appellate Court of Illinois be denied.

Respectfully submitted,

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